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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,964	01/16/2007	Florence Henry	C 2925 PCT/US	8591
23657	7590	05/07/2009	EXAMINER	
FOX ROTHSCHILD LLP 2000 MARKET STREET PHILADELPHIA, PA 19103			TATE, CHRISTOPHER ROBIN	
			ART UNIT	PAPER NUMBER
			1655	
			MAIL DATE	DELIVERY MODE
			05/07/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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DETAILED ACTION

At the outset, it is noted that the instant Application has been revived from abandonment (see Petition decision mailed 21 April 2009).

The amendment filed 30 March 2009 is acknowledged and has been entered. Claims 11 and 13-29 have been examined on the merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 11 and 13-29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Peyrot et al. (FR 2 850 273 - full English translation of this document also enclosed) for the reasons set forth in the previous Office action.

Claims 11, 13, 14, 20-23, and 27-29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Withel (1994 - reference cited by Applicants in the IDS submitted 2/20/2007) for the reasons set forth in the previous Office action.

Applicants' arguments concerning the USC 103 rejections above have been carefully considered but are not deemed persuasive of error in the rejections.

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With respect to the first USC 103 rejection above, Applicants argue that the Peyrot et al. reference is directed to an extract from the buds of the *Castanea sativa* plant including the fact that the title of this document is "EXTRACT OF CASTANEA SATIVA BUDS". Applicants further argue that although Peyrot et al. do mention that the leaves and other portions of this plant can be extracted, this reference would not lead a person skilled in the art to expect the highly advantageous and beneficial results reported in the present application with regard to the use of the leaf extracts in connection with cosmetic and dermatological uses and that only through the hindsight of the present application would the skilled artisan be led to ignore the thrust of the Peyrot et al. patent which is directed to the buds of the plant and turn to the leaves of the plant. However, as previously discussed, although Peyrot et al. teach topically-applied cosmetic compositions comprising an extract of *Castanea sativa*, preferably from the buds thereof, Peyrot et al. also expressly teach that such a cosmetic extract preparation may also be obtained from other parts of the *Castanea sativa* tree including from the leaves thereof. Further, as previously discussed, Peyrot et al. also beneficially disclose the addition of one or more auxiliaries/additives to their extract preparation (such as various ones from those instantly claimed) as well as incorporating 0.1-10 weight percent of the extract within such cosmetic compositions. Peyrot et al. further disclose preparing such an extract via extracting the plant material (e.g., buds, leaves, wood, or bark) with a solvent such as water and/or an alcohol (e.g., ethanol, methanol, etc), and removing the solids therefrom such as by filtering the extract solvent one or more times to obtain a concentrated extract thereof. Peyrot et al. also disclose topically applying such a cosmetic composition to a person's skin for various therapeutic cosmetic purposes including to stimulate the synthesis of essential components of the extracellular matrix

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(e.g., elastin, collagen, and hyaluronic acid) by dermal cells, and for the cytoprotection of the skin (see entire document including full English translation thereof). Accordingly, the overall teaching provided by Peyrot et al. would clearly provide motivation for one of ordinary skill in the art to obtain an extract from the leaves of *Castanea sativa* and to utilize such a leaf extract within a topical composition containing one or more of the auxiliary/additive agents instantly claimed (i.e., not through the hindsight of the present application). That is (as previously set forth), it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to prepare a cosmetic composition comprising an extract from the leaves of *Castanea sativa* (via the instantly claimed preparatory steps) as the active ingredient therein (including within the instantly claimed weight percentage range), as well as to topically apply such a cosmetic composition to a person's skin, based upon the overall beneficial teachings provided by the cited reference (i.e., not through the hindsight of the present application).

With respect to the second USC 103 rejection above, Applicants argue that there is no teaching or suggestion in the Withel reference which would lead a person skilled in the art to compositions adapted for topical application to the human or skin since this reference is directed exclusively to the ingestion of such extracts by way of teas and other like beverages. However, as previously discussed, Withel also beneficially discloses that such *Castanea sativa* leaf extract preparations have been incorporated into various prior art pharmaceutical compositions which would also intrinsically comprise auxiliaries and/or additives therein (see page 133, third column under the headings *Making the tea* and *Phytomedicines*). Accordingly (as stated in the previous Office action), it would have been obvious to one of ordinary skill in the art at the time the

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claimed invention was made to prepare a therapeutic composition comprising an aqueous extract of *Castanea sativa* leaves as the active ingredient therein, based upon the beneficial teachings provided by the cited reference. The adjustment of particular conventional working conditions [e.g., determining an appropriate concentration of such a leaf extract and/or adding commonly employed auxiliaries/additives, including one or more of those instantly claimed, thereto (many of which would provide for a phytomedicine composition adapted for topical application to the skin: e.g., including a conventional auxiliary/additive such as a preservative, solubilizer, or antimicrobial agent within such a phytomedicine - whether expressly taught to be topically applied or not - would still read upon being adapted for topical application since nothing would preclude such a phytomedicine composition from being topically applied)] is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Conclusion

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Tate whose telephone number is (571) 272-0970. The examiner can normally be reached on Mon-Thur, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher R. Tate/
Primary Examiner, Art Unit 1655